

USN 10/066,595

Art Unit: 1723

Remarks

Pursuant to the restriction requirement the applicants have cancelled claims 1 to 11 without prejudice to their right to pursue such claims in a divisional application.

The objections pertaining to claim 15 arose out of an incorrect dependency. This has been corrected.

Claims 12 to 15 have been directed to mixing apparatus as shown in Figures 1 and 2 including the storage tank for the tempered, lipid based formulation and the reservoir for the color syrup.

Paragraph [0070] has been amended to state expressly what is implicit in the drawings and disclosure, namely that the formulation flows in a continuous stream through the feed tube 28. As shown in Figure 2 the purpose of the cyclically operating pump is to insert globs of syrup at spaced intervals into the stream of formulation flowing into the mixing body.

The Examiner has cited Walker against former claim 12 under 35 USC 102. In order to succeed with such a rejection, the Examiner must show each of the features claimed in the prior art. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently, described in a single prior art reference." *Verdegaard Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051.

There are at least two important differences between Walker and the present invention. The first is that Walker mixes water with a granular material, whereas the present invention mixes a syrup with a liquid ("tempered lipid-based formulation"). The second is that in Walker both the granular material and the liquid are supplied intermittently, either together or alternately (line 54-56, col. 3), whereas in the present invention the syrup is supplied intermittently into a continuous stream of liquid so that spaced-apart globs of syrup are inserted into the stream of liquid flowing into the mixing body.

These differences in operation result in differences in the structure of the present invention compared to Walker that are reflected in claim 12 as amended.

Firstly, Walker does not have a storage tank containing a tempered formulation. Walker has a hopper for containing the granular material (clay).

Secondly, Walker does not have a feed tube that permits tempered liquid to flow in a continuous stream from the storage tank into a mixing body. In Walker the granular material is discharged

USN 10/066,595

Art Unit: 1723

from the hopper through the "rotary valve 3 providing for the delivery to the chamber of predetermined amounts of clay at a rate determined by the drive..." (lines 38 - 40, col. 3). Even if the granular material were replaced by a liquid it could not be discharged into the chamber through a feed tube in a continuous stream so as to embed globs of liquid in it as permitted by the present invention.

The difference in operation of the present invention relative to Walker therefore translates into differences in structure, and as such claim 12 as amended cannot be regarded as anticipated by Walker under 35 USC 102(b).

In addition, the Examiner's characterization of parts 5, 7, 9 in Walker as a cyclically operating pump is respectfully traversed. Part 5 is a reduction gear, part 7 is a valve, and part 9 is a cam. These parts do not provide any pumping action. There is no express disclosure in Walker of a pump. Such a disclosure is not inherent since the water supply would likely be from a pressurized source or gravity fed. There is no suggestion of a cyclically operated pump as required by claim 12.

The Examiner's rejection under 35 USC 102 is therefore respectfully traversed.

In view of the 102 rejection, the Examiner has not raised the issue of USC 35 103 against claim 12. However, it is respectfully pointed out that Walker lies clearly in a non-analogous art and cannot therefore be properly combined with another reference to assert obviousness. Clearly, the art of brick-making (see line 7, col. 1) cannot be considered analogous to the food industry. A person skilled in the art of food production would not be expected to seek solutions in the brick-making art. In this connection it is noted that it is proper to give weight to the preamble in defining the "framework" of the invention. (MPEP 2111.02). The invention relates to an apparatus for preparing food products, and clearly one skilled in the art would distinguish such an apparatus from a cement mixer, which is essentially what Walker teaches.

Moreover, based on the teachings of Walker there would be no motivation to remove the valve between the hopper and the mixing chamber because such a modification would be directly contrary to the teachings of Walker. An argument of obviousness cannot be based on a modification that would render the prior art inoperative for its stated purpose.

USN 10/066,595

Art Unit: 1723

With regard to claim 13, it is noted that Trealmes relates to an agitator for the high agitation of liquids (see line 1, col. 1). Trealmes does not relate to a mixer for mixing granular material with liquids, as taught by Walker. It is respectfully submitted therefore that one skilled in the art would presume any benefit would arise as a result of incorporating the teachings of Trealmes, relating as they do to an agitator for promoting dispersal of different phases in liquids, into the mixer of Walker, which relates to the mixing of liquid into granular material. The resulting mixture is Walker is not a liquid, but a clay like material.

It is believed that the application is now in condition for allowance, and such action is respectfully requested.

Respectfully submitted,



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